

ADVISORY OPINION NO. 2000-36

Issued On December 7, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

COPY

OPINION SOUGHT

A **County Economic Development Authority** asks whether it may sell or lease property to a business which employs an Authority Board Member.

FACTS RELIED UPON BY THE COMMISSION

The Authority has purchased and is developing a tract of land to expand an existing industrial park targeted at a particular industry. Several of the Authority's Board Members are employed by businesses which are engaged in activities in the targeted industry and may be interested in leasing or buying land in the industrial park.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that ... no elected or appointed official or employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control ...

WV Code 61-10-15 states in part that ... It shall be unlawful for any member ... of any ... county or district board ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such member he may have any voice, influence or control ...

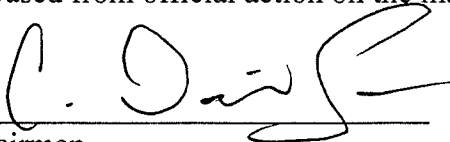
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Both the Ethics Act and WV Code 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in, a public contract, purchase or sale over which their public position gives them control.

The Ethics Act's prohibition against private interests in public contracts, WV Code 6B-2-5(d), applies to public servants, their spouses and businesses with which they or their spouses have an ownership interest of more than 10%. The Ethics Act's prohibition does not apply to a business by which a public servant is employed, unless the employee or the employee's spouse also has an ownership interest in excess of 10%.

Because the Board Members have no ownership interest in the businesses by which they are employed, the Ethics Act's prohibition does not apply and it would not be a violation of the Ethics Act for the Authority to lease or sell property to those businesses. The Members would, of course, be required to be recused from taking official action in regard to such transactions.

However, WV Code 61-10-15, does apply to businesses by which public servants are employed and it would be a violation for the Authority to lease or sell property to a business which employs one of its Board Members, even if the Member were recused from official action on the matter.


Chairman